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EXAMINER

COSIMANO, EDWARD R

ART UNIT	PAPER NUMBER
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2863

DATE MAILED: 06/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/775,733

Applicant(s)

DIAS ET AL.

Examiner

Edward R. Cosimano

Art Unit

2863

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

1. The Oath/Declaration and Abstract as originally filed are acceptable to the examiner.
2. Applicant's claim for the benefit of an earlier filing date pursuant to 35 U.S.C. 119(e) is acknowledged.
3. The drawing(s) filed 09 February 2004 are objected to because:

A) The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the:

(1) entire subject matter added by claims 11, 20, 28, 35 & 37 to the base claim;
must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

B) the drawings fail to comply with 37 CFR 1.84(p)(5) because they do not include the following reference characters mentioned in the description, note:

(1) reference number 102 which has been mentioned in the written description of figure 1 in paragraph number 22 on page 4, note "[0022] Fig. 1 depicts a system 100 for using a database system according to one embodiment of the present invention. System 100 includes a client 102, a database system 105, and one or more users 108.", {emphasis added};

(2) reference number 104 which has been mentioned in the context of the written description in paragraph number 40 on page 8, note "[0040] In one embodiment, ADDM 104 uses ... system 105. Then, ADDM 104 may use techniques to analyze the activity to determine which operations may be causing performance problems. ", {emphasis added};

(3) reference number 1000 which has been mentioned in the context of the written description in paragraph number 44 on page 9, note "[0044] Fig. 4 depicts a more detailed block diagram of a system 1000 implementing an embodiment of the present invention. System 1000 depicts ... about the activity for sessions 804.", {emphasis added};

(4) reference number 1100 which has been mentioned in the context of the written description in paragraph number 49 on pages 9-10, note "[0049] Fig. 5

depicts a simplified flow chart 1100 of ... information captured for all active sessions is analyzed as a whole.”, {emphasis added};

see also below in regard to the corresponding objection(s) to the disclosure.

C) the drawings fail to comply with 37 CFR 1.84(p)(5) because they include the following reference characters not mentioned in the description, note:

(1) reference numbers 108-1, 108-2 & 108-3 which have not been mentioned in the written description of figure 1 in paragraph numbers 22 & 24 on page 4, “[0022] Fig. 1 depicts a system 100 for using a database system according to one embodiment of the present invention. System 100 includes a client 102, a database system 105, and one or more users 108.” and “[0024] Users 108 send requests for operations to be performed in database 106. The operations include reading data in database 106, writing data to database 106, updating data in database 106, etc. For example, the requests include SQL statements that cause operations to be performed in database 106. The interaction of the users 108 with database 106 using requests is known in the art and a person of skill in the art will appreciate how database systems may be used.”, {emphasis added};

(2) reference number 900 which has not been mentioned in the written description of figure 3 in paragraph numbers 36-43 on pages 7-9;

see also below in regard to the corresponding objection(s) to the disclosure and the proposed drawing amendment.

D) as can be seen in fig. 5, box 1106 lacks the “No” legend for the flow path between box 1106 and the box entitled “Discard captured information” as described in paragraph 52 on page 11, “[0052] In step 1106, if the captured information is not important, then is step 1108, the information is discarded. If the captured information is important, the information is indexed in step 1108.”.

E) in order to be consistent, it is noted that applicant has consistently used:

(1) the phrase “users 108” when referencing reference legend 108 of figs. 2 & 4, see (a) paragraph numbers 22 & 24 on page 4; (b) paragraph numbers 27 & 29 on page 5; (c) paragraph number 31 on page 6; (d) paragraph number 40 on page 8 (at line 5 “users 107” should be –users 108--); (e) paragraph number 44 on

page 9; (f) paragraph number 48 on page 10; (g) paragraph number 49 on pages 9-10; (h) paragraph number 53 on page 11; and (i) paragraph number 56 on page 12; and

(2) the phrase “database server 107” when referencing reference legend 107 in fig. 1, see (a) paragraph numbers 22 & 23 on page 4; (2) paragraph number 28 on page 5; (c) paragraph number 40 on page 8, (at line 5 “users 107” should be –users 108--); and (d) paragraph number 41 on pages 8-9.

Hence, it is noted that the features of the invention designated by reference legends “108-1”, “108-2” & “108-3” in fig. 1 should be designated by reference legend –108--.

3.1 Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The disclosure is objected to because of the following informalities:

A) applicant must update the application data with the current status of each reference application in (1) paragraph numbers 1, 3 & 4 on page 1; and (2) paragraph number 25 on page 4. Note the suggested changed below in either:

(1) paragraph number 1, “[0001] This application is a non-provisional application of and claims benefit to U.S. Provisional Application No. 60/500864, filed September 05, 2003, now expired (Attorney Docket No.: 021756-

003701U5), which is incorporated by reference in its entirety for all purposes.”; and

(2) paragraph numbers 3 & 4, “[0003] U.S. Application No. [[____]] 10/775,531, entitled “AUTOMATIC DATABASE DIAGNOSTIC MONITOR ARCHITECTURE”, Attorney Docket No. 021756-003700U5, filed [[concurrently]] February 09, 2004; and

[0004] U.S. Application No. [[____]] 10/775,513, entitled “THE TIME MODEL”, Attorney Docket No. 021756-004000U5, filed [[concurrently]] February 09, 2004.”; and

(3) paragraph number 25, “[0025] In one embodiment, an automatic database diagnostic monitor (ADDM) may use information captured by embodiments of the present invention. ADDM is described in more detail in the application entitled “AUTOMATIC DATABASE DIAGNOSTIC MONITOR ARCHITECTURE”, U.S. Application No. [[____]] 10/775,531, entitled “AUTOMATIC DATABASE DIAGNOSTIC MONITOR ARCHITECTURE”, Attorney Docket No. 021756-003700U5, filed [[concurrently]] February 09, 2004; and the application entitled “THE TIME MODEL”, U.S. Application No. [[____]] 10/775,513, entitled “THE TIME MODEL”, Attorney Docket No. 021756-004000U5, filed [[concurrently]] February 09, 2004, the contents of which are incorporated herein for all purposes. In one embodiment, ADDM uses the information captured to diagnose performance problems in database system 105.”.

B) errors and/or inconsistencies between the drawings filed 09 February 2004 and the written description have been noted:

(1) if applicant chooses not to delete reference numbers 108-1, 108-2 & 108-3 from fig. 1, note above, then the specification fails to comply with 37 CFR 1.84(p)(5) because the specification does not include an explicit reference to these reference legends in the description of fig(s). 1 in paragraph numbers 22 & 24 on page 4, note:

“[0022] Fig. 1 depicts a system 100 for using a ... and one or more users 108.”; and

“[0024] Users 108 send ... of the users 108 with database 106 using requests is known in the art and a person of skill in the art will appreciate how database systems may be used.”, {emphasis added}.

In this regard to the references to legend 108, applicant should note the above proposed drawing correction and below in point (C).

(2) if applicant chooses not to add reference number 102 to fig. 1, note above, then the specification fails to comply with 37 CFR 1.84(p)(5) because the specification includes an explicit reference to this reference legend in the description of fig(s). 1 in paragraph number 22 on page 4, and paragraph 22 should be amended as follows, “[0022] Fig. 1 depicts a system 100 for using a database system according to one embodiment of the present invention. System 100 includes a client [[102]], a database system 105, and one or more users 108.”.

(3) if applicant chooses not to delete reference number 900 from fig. 3, note above, then the specification fails to comply with 37 CFR 1.84(p)(5) because the specification does not include an explicit reference to this reference legend in the description of fig(s). 3 in paragraph numbers 36-43 on pages 7-9.

(4) if applicant chooses not to add reference number 104 to the drawings, note above, then the specification fails to comply with 37 CFR 1.84(p)(5) because the specification includes an explicit reference to this reference legend in the description of fig(s). 1 in paragraph number 40 on page 8, and paragraph 40 should be amended as follows in section (C).

(5) if applicant chooses not to add reference number 1000 to fig. 4, note above, then the specification fails to comply with 37 CFR 1.84(p)(5) because the specification includes an explicit reference to this reference legend in the description of fig(s). 4 in paragraph number 44 on page 9, and paragraph 44 should be amended as follows, “[0044] Fig. 4 depicts a more detailed block diagram of a system [[1000]] implementing an embodiment of the present invention. System [[1000]] depicts the data flow for data captured by SAM 802.

SAM 802 includes modules, such as session sampler 1006, circular buffer view creator 1008, and database view creator 1010, that may be implemented in software, hardware, or any combination thereof. Users 108 connect to database system 105. Sessions 804 are created and represented by state objects. The state objects include information about the activity for sessions 804.”.

(6) if applicant chooses not to add reference number 1100 to fig. 5, note above, then the specification fails to comply with 37 CFR 1.84(p)(5) because the specification includes an explicit reference to this reference legend in the description of fig(s). 5 in paragraph number 49 on pages 9-10, and paragraph 49 should be amended as follows, “[0049] Fig. 5 depicts a simplified flow chart [[1100]] of a method for filtering captured information according to one embodiment of the present invention. In step 1102, captured information in circular buffer 1002 is reviewed. In one embodiment, the information is filtered on a user by user basis. For example, the information captured is associated with a session 804 and thus a user 108. The information for each session 804 is analyzed to determine if it should be deleted or stored. In another embodiment, the information captured for all active sessions is analyzed as a whole.”.

(7) as can be seen in fig. 5, reference number 1108 is used twice to reference the box entitled “Discard captured information” and the box entitled “Index captured information for the session”, see the context of the description of fig. 5 in paragraph 52 on page 11, and paragraph 52 on page 11 should be amended as follows “[0052] In step 1106, if the captured information is not important, then [[is step 1108,]] the information is discarded. If the captured information is important, the information is indexed in step 1108.”.

(8) as can be seen in fig. 6 applicant has used reference legend “1215” to designate an “USER COMPUTER”, reference legend “1220” to designate a “NETWORK”, and reference legend “1230” to designate a “WEB APPLICATION SEVER”. However, the description of fig. 6 in paragraphs 61-67 on pages 13-14 uses (1) reference legends “1215” and “1220” to designate the “user computer”; (2) reference legends “1220” and “1230” to designate the

“network”. Therefore to be consistent, paragraphs 61, 62, 64, 66 -67 on pages 13-14, should be amended as follows:

“[0061] Fig. 6 is a block diagram of a system 1200 for implementing an embodiment of the invention. System 1200 includes user computers 1205, 1210, and [[1220]] 1215. User computers 1205, 1210, and [[1220]] 1215 can be general purpose personal computers having web browser applications. Alternatively, user computers 1205, 1210, and [[1220]] 1215 can be any other electronic device, such as a thin-client computer, Internet-enabled mobile telephone, or personal digital assistant, capable of displaying and navigating web pages or other types of electronic documents. Although system 1200 is shown with three user computers, any number of user computers can be supported.”;

“[0062] A web server 1225 is used to process requests for web pages or other electronic documents from user computers 1205, 1210, and [[1220]] 1215. In an embodiment of the invention, the data analysis software operates within a web browser on a user computer. In this embodiment, all user interaction with the data analysis software is via web pages sent to user computers via the web server 1225.”;

“[0064] In an embodiment, the web application server 1230 dynamically creates web pages for displaying the data analysis software. The web pages created by the web application server 1230 are forwarded to the user computers via web server 1225. Similarly, web server 1225 receives web page requests and input data from the user computers 1205, 1210 and [[1220]] 1215, and forwards the web page requests and input data to web application server 1230.”;

“[0066] An electronic communication network 1220 enables communication between computers 1205, 1210, and 1215, web server 1225, web application server 1230, and database 1235. In an embodiment, network 1220 may further include any form of electrical or optical communication devices, including wireless and wired networks. Network [[1230]] 1220 may also incorporate one or more local-area networks, such as an Ethernet network; wide-

area networks, such as the Internet; and virtual networks, such as a virtual private network.”.

C) in order to be consistent, it is noted that applicant has consistently used:

(1) the phrase “users 108” when referencing reference legend 108 of figs. 2 & 4, see (a) paragraph numbers 22 & 24 on page 4; (b) paragraph numbers 27 & 29 on page 5; (c) paragraph number 31 on page 6; (d) paragraph number 40 on page 8 (at line 5 “users 107” should be –users 108--); (e) paragraph number 44 on page 9; (f) paragraph number 48 on page 10; (g) paragraph number 49 on pages 9-10; (h) paragraph number 53 on page 11; and (i) paragraph number 56 on page 12; and

(2) the phrase “database server 107” when referencing reference legend 107 in fig. 1, see (a) paragraph numbers 22 & 23 on page 4; (2) paragraph number 28 on page 5; (c) paragraph number 40 on page 8, (at line 5 “users 107” should be –users 108--); and (d) paragraph number 41 on pages 8-9; and

(3) the acronym “ADDM” with out a reference legend, see paragraphs 25 & 26 on page 4.

Hence, it is noted that the reference to “users 107” at line 5 of paragraph number 40 on page 8 should be –users 108--, and the acronym “ADDM 104” at lines 1 & 12 of paragraph 40 on page 8 should be –ADDM--, see “[0040] In one embodiment, ADDM [[104]] uses statistical techniques to ensure that the active session samples are statistically significant (from the captured information). For example, monitoring device determines a performance problem. The performance problem indicates which operations may be causing problems. Then, monitoring device looks at the individual requests that were made by users [[107]] 108 that caused the problem. In order to do this, the samples of active session history are analyzed. The information in different snapshots for an operation are reviewed and a model of what was recorded is developed. The model is useful in determining what a request did in database server 107 (e.g., what operations were performed). If information captured is relatively unintrusive to the operation of database system 105, then snapshots of active sessions may be taken at continuous uniform intervals. The snapshots may provide a statistically significant picture of activity

in database system 105. Then, ADDM [[104]] may use techniques to analyze the activity to determine which operations may be causing performance problems.”.

4.1 Appropriate correction is required.

5. How Claims are to be interpreted during the prosecution of an application for patent.

5.1 The pending claims are interpreted by giving the language of every positively recited limitation of the pending claims the broadest reasonable interpretation that is consistent with how one of ordinary skill at the time of the invention would have interpreted the language of the claims, In re Cortright, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999), while (1) taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant’s specification, In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997), and (2) without reading unrecited limitations from applicant’s disclosure in to the claims, see In re PRATER AND WEI, 162 USPQ 541 at 551 (CCPA 1969) “We are not persuaded by any sound reason why, at any time before the patent is granted, an applicant should have limitations of the specification read into a claim where no express statement of the limitation is included in the claim.”, In re PRATER AND WEI, 162 USPQ 541 at 551 (CCPA 1969).

5.1.1 Further, when interpreting the claims as a whole, then the interactions of claim limitations as a whole must be considered in order to determine the scope of a claim and the applicant’s contribution in the art, In re LARSEN, No. 01-1092 (Fed. Cir. May 9, 2001) (unpublished) “The court observed that the totality of all the limitations of the claim and their interaction with each other must be considered to ascertain the inventor’s contribution to the art.”. Where a statutory process/machine must contain an operative series of acts/functions or structures, In re MUSGRAVE, 167 USPQ 280 at 289-290 (CCPA 1970), with explicitly recite all of the necessary interactions to accomplish the recited utility of the claimed invention, for without these interaction the claim as a whole would not be a proper process/machine under the statute, In re SARKAR 200 USPQ 132 at 136 (CCPA 1978).

5.1.2 In regard to the limitations on the interpretation of the claimed invention as imposed by the Court, it is noted that applicant has gone to great lengths in the written description to describe each of the disclosed means or acts by not describing a specific structure for each of means or a specific act but by describing the means or act by describing the function of each of the means or

acts. Hence, it is noted that as set forth by the Court each of the limitations of the claims could be reasonably interpreted by one of ordinary skill at the time of the invention as not being not limited to the corresponding disclosed structure/act but in fact would to be broadly interpreted to include any and all means that would provide the corresponding functions or acts that are recited as the claimed invention.

6. Claims 31-35 are objected to because of the following informalities.

6.1.1 In regard to claim 31, it is noted that the phrasing of lines 7-12 when taking into consideration the phrasing of line 6 “at each of the each plurality of times, performing the steps of: code for ...”, is confusing in view of the fact that applicant is claiming an article. In this regard the phrasing of combined lines 6-8 or 6 & 9-10 or 6 & 11-12 when taken as a whole, would read as follows:

“at each of the each plurality of times, performing the steps of: code for determining one or more active sessions from the one or mort sessions included in the database that are active at the time;”;

“at each of the each plurality of times, performing the steps of: code for capturing information for each of the one or more active sessions; and”; and

“at each of the each plurality of times, performing the steps of: code for storing the captured information for each of the active sessions.”.

6.1.2 The examiner suggest to correct this problem claim 31 be amended as follows:

Claim 31. (Currently Amended) A computer program product stored on a computer-readable medium for capturing information for activity in a database, the database including one or more sessions that may or may not be active over a period of time, the computer program product comprising:

code for determining a plurality of times to sample the database;

code for at each of the each plurality of times, performing the steps of:

[[code for]] determining one or more active sessions from the one or mort sessions included in the database that are active at the time;

[[code for]] capturing information for each of the one or more active sessions; and

[[code for]] storing the captured information for each of the active sessions.

6.1 Appropriate correction is required.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7.1 Claim(s) 11, 20, 28, 35 & 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7.1.1 In regard to claims 11, 20, 28, 35 & 37, since the written description fails to provide a written description of the entire subject matter added by indicated dependent claim to the base claim, the subject matter added by this claim lacks antecedent basis in the disclosure.

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8.1 Claim(s) 31-39 are rejected under 35 U.S.C. 101 because the claimed invention lacks utility and therefore is directed to non-statutory subject matter.

8.1.1 During the following analysis the following principles have been applied:

A) that a computer readable media containing data/information that would cause a useful function to be performed when claimed in conjunction with a computer in such a manner that the functionality recited as the invention can be realized are statutory, see MPEP 2106(IV)(B)(1)(a) and In re BEAUREGARD, 35 USPQ2d 1383 (CAFC 1995), and note the corresponding claims of Beauregard et al (5,7010,578); and

B) that data structures by definition are not programs, “(The definition of “data structure” is “a physical or logical relationship among data elements, designed to support specific data manipulation functions.” The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).)”, see also MPEP 2106(IV)(B)(1); and

C) a statutory process requires a sequence of operation steps to be statutory, “All that is necessary, in our view, to make a sequence of operational steps a statutory “process” within 35 U.S.C. 101 is that it be in the technological arts so as to be in consonance with the Constitutional purpose to promote the progress of “useful arts.” Const. Art. 1, sec. 8.” In re MUSGRAVE, 167 USPQ 280 at 289-290 (CCPA 1970); and

D) concerning statutory subject matter, as set forth in the following quote, the computer program running on a computer makes the computer a different machine, see In re ALAPPAT, 31 USPQ2d 1545 at 1558 (CAFC 1994), “We have held that such programming creates a new machine, because a general purpose computer in effect becomes a special purpose computer once it is programmed to perform particular functions pursuant to instructions from program software.”; and

E) the limitations of the specification may not be read into the claims, “We are not persuaded by any sound reason why, at any time before the patent is granted, an applicant should have limitations of the specification read into a claim where no express statement of the limitation is included in the claim.”, In re PRATER AND WEI, 162 USPQ 541 at 551 (CCPA 1969).

8.1.2 It is noted that:

A) claim(s) 31-39 are directed to a manufacture/article/item that define an item by it's characteristics/features/components that when take as a whole define the manufacture/article/item.

8.1.3 It is further noted that:

A) claim(s) 31-39 when take as a whole are directed to a manufacture/article/item to achieve the claimed utility of “capturing information for activity in a data base”.

8.1.4 In regard to each of the pending claims taking each claim as a whole and interpreting the claims as set forth above, the following observations have been made in regard each of the limitations of the claims:

A) the claims recite a utility of “capturing information for activity in a data base”;

B) the language of the claims recites data/information stored in a type of memory and fails to recite any requirement that a machine be controlled by the functional subject matter and hence the recited functional language is deemed to be non functional descriptive material, “Cf. In re GULACK, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability). Common situations involving nonfunctional descriptive material are: ... - a computer that differs from the prior art solely with respect to nonfunctional descriptive

material that cannot alter how the machine functions (i.e., the descriptive material does not reconfigure the computer), or - a process that differs from the prior art only with respect to nonfunctional descriptive material that cannot alter how the process steps are to be performed to achieve the utility of the invention. Thus, if the prior art suggests storing a song on a disk, merely choosing a particular song to store on the disk would be presumed to be well within the level of ordinary skill in the art at the time the invention was made. The difference between the prior art and the claimed invention is simply a rearrangement of nonfunctional descriptive material.” MPEP 2106; and

C) a memory device alone, as recited as the claimed invention, can not achieve the functionality of the claimed invention.

8.1.5 In view of the above characterization of claim(s) 31-39 it can clearly be seen that, as these claims would be reasonably interpreted by one of ordinary skill at the time the invention was made, the claims merely conveying to one of ordinary skill at the time the invention was made a description of an invention that merely sets forth the concept of data/information stored on a type of memory, where the recited manufacture/article/item in and of itself can not realize the utility set forth by applicant as the disclosed and claimed.

8.1.6 Such an memory that stores data/information as recited in each/the claim, as would be recognized by one of ordinary skill at the time the invention was made, as claimed is not operative so as to achieve either the disclosed or claimed practical and substantial utility of “capturing information for activity in a data base” that applicant has set forth.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9.1 Claims 1-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Womble (5,488,648) in view of the evidence provided by either Mac Arthur (3,324,458) or Miller et al (3,351,910) or Cihwsky et al (4,994,986) or Lu (2004/0044500).

9.1.1 In regard to claims 1-5, 10-15, 18-23 & 27-30, Womble ('648) discloses a computer implemented process/machine that under the control of an operating program stored in a computer accessible storage device provides the function of event/fault detection and diagnosis in a machine/process. To this end Womble ('648) discloses a machine/process to monitor/sense the current operation of the machine/process by acquiring data/information indicative of the state of each monitored part/section/process of the machine/process that would provide an indication of the potential cause of a fault. The data/information regarding the monitored operation of the machine/process is then captured and sequentially stored/recorded to produce a measurement history log. When a fault has occurred and has been detected, then the stored data/information may be analyzed in order to determine the possible cause or causes of the detected fault.

9.1.2 Womble ('648) does not disclose that the monitoring and recording process is performed periodically or whether or not the monitoring is internal or external to the monitored process. However, in the environment of event monitoring for fault detection, either Mac Arthur ('458) in 1967 or Miller et al ('910) in 1967 or Cihwsky et al ('986) in 1991 or Lu ('500) with an effective date of September 04, 2003 each disclose a computer implement process in which a computer is used to either continuously or periodically remotely sense the current operating state/condition of a machine/process, compare the sensed condition to fault criteria and then display sensed information and the results of the comparison at a central location. Further Miller et al ('910) discloses that the monitored variable may also be recorded only when there is a change in the variable. Where the use of a computer to perform the combination of remote monitoring and centrally displaying information makes it faster and easier for an operator to properly diagnose faults in the operation of the machine/process and periodic logging of data/information reduces the amount of data required to be stored for event detection and diagnosis.

9.1.3 Since the fault detection and diagnoses machines/processes of Womble ('648) would monitor and store a large amount of data/information that would not be required for fault detection/diagnosis, it would have been obvious to one of ordinary skill at the time the invention

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was made that the fault detection/diagnosis machines/processes of Womble ('648) could be modified to remotely internally sense the operating condition of the machine/process and the log/store data/information about the operation of the machine/process periodically where the recording period would provide sufficient data/information to detect and diagnosis faults as taught by either Mac Arthur ('458) in 1967 or Miller et al ('910) in 1967 or Cihwsky et al ('986) in 1991 or Lu ('500).

9.1.4 In regard to claims 6-7, note the teachings of either Mac Arthur ('458) in 1967 or Miller et al ('910) in 1967 or Cihwsky et al ('986) in 1991 or Lu ('500) regarding the need to log enough desired data/information so as to provide a meaningful event detection and diagnosis.

9.1.5 In regard to the nature of the data captures as recited in claims 8-9, note the teachings of either Womble ('648) or Mac Arthur ('458) in 1967 or Miller et al ('910) in 1967 or Cihwsky et al ('986) in 1991 or Lu ('500) regarding the need to log data/information that would provide a meaningful representation of the current operation of the machine/process so that a meaningful result of the event detection and diagnosis may be provided to the operator.

9.1.6 In regard to the temporary storage of claims 16-17, 24-26, it is noted that computer systems include the use of a temporary working memory to store data/information while processing the data/information.

9.1.7 In regard to claims 31-39, it is further noted that the combination of the operating program that is stored with in the memory of the machine of Womble ('648) as modified by either Mac Arthur ('458) in 1967 or Miller et al ('910) in 1967 or Cihwsky et al ('986) in 1991 or Lu ('500) and would controls the operation of the machine/process of Womble ('648) as modified by either Mac Arthur ('458) in 1967 or Miller et al ('910) in 1967 or Cihwsky et al ('986) in 1991 or Lu ('500) would be recognized by one of ordinary skill at the time the invention was made as the invention recited in these claims.

10. The examiner has cited prior art of interest, for example:

A) Anderson (2,883,255) discloses an automatic process logger in which process variables indicative of the operation of a machine/process are periodically scanned and sensed, the sensed variables are recorded and compared to fault indicating criteria and then printed/displayed in a manner that would permit the operator to easily identify fault conditions.

B) Ichii (JP 55-91036 A) discloses that a diagnosis routine may be run in a computer system as a background process.

C) Poyser et al (4,654,806) discloses an automatic process logger in which process variables indicative of the operation of a machine/process are periodically scanned and sensed, the sensed variables are recorded and compared to fault indicating criteria as well as historical sensed data to determine trends that are indicative of a fault.

D) either Boldt et al (WO 02/37061 or 6,954,717) disclose that in order to diagnose some faults it is necessary to record measurements of system over a period of time.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward R. Cosimano whose telephone number is 571-272-0416. The examiner can normally be reached on 571-272-0571 from 7:30am to 4:00pm (Eastern time).

11.1 If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow, can be reached on 571-272-2269. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11.2 Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ERC
06/15/2006


Edward Cosimano
Primary Examiner